Office-Supreme Court, U.S.
FILED
AUG 18 19
DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 19.

CHARLES PAUL, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

On Appeal From the United States District Court for the Northern District of California, Southern Division.

## Brief of Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, General Dairy Industry Committee of Southern California, as Amici Curiae in Support of Position of Appellants.

EMIL STECK, JR.,
234 East Colorado Boulevard,
Pasadena, California,

THOMAS G. BAGGOT,
411 West Fifth Street,
Los Angeles 13, California,

*Attorneys for Amici Curiae Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, General Dairy Industry Committee of Southern California.*

JESSE E. BASKETTE,
*Of Counsel for Milk Industry Foundation.*

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

## SUBJECT INDEX


PAGE

Brief filed with consent of parties ..... 1

Interest of amici curiae ..... 2

Argument ..... 4

I.

The decision of the District Court, rendered contrary to the decision of this court in the Penn Dairies case, thwarts the administration of the California Milk Stabilization Act and causes irreparable injury to the consuming public and the California Milk Industry in a situation where there is neither economic necessity nor federal constitutional provision or statute requiring the United States to override the worthwhile objectives of state law 4

II.

The State of California retains jurisdiction over Castle and Travis Air Force Bases, and Oakland Army Perminal.... 20

Conclusion ..... 26

# TABLE OF AUTHORITIES CITED


| CASES | PAGE |
|---|---|
| Adams v. United States, 319 U. S. 312 | 21 |
| Fort Leavenworth R.R. Co. v. Lowe, 114 U. S. 534 | 25 |
| Gill v. State, 210 S. W. 637 | 21 |
| James v. Dravo Contracting Co., 302 U. S. 134 | 21, 25 |
| Jerseymaid Milk Products Co. v. Brock, 13 Cal. 2d 620 | 4, 6, 7 |
| Knudsen Brothers Dairy, Inc. v. Benson (U. S. D. C. Conn., Civ. Action 8145, 1960) | 16 |
| Knudsen Brothers Dairy, Inc. v. Freeman (Ct. of App., 2d Cir., No. 26,698) | 16 |
| Larson v. South Dakota, 278 U. S. 429 | 21 |
| Milk Control Board v. Gorselini Dairies, Inc., 301 Mass. 174, 16 N. E. 2d 641 | 14 |
| Nebbia v. New York, 291 U. S. 502 | 4, 7, 11 |
| Pacific Coast Dairy v. Department of Agriculture, 19 Cal. 2d 818, rev'd 318 U. S. 285 | 6, 8, 14 |
| Paul v. United States (Oct. term, 1962, No. 19, p. 5) | 9, 16, 22, 26 |
| Penn Dairies v. Commission, 318 U. S. 261 | 13, 14, 16, 26 |
| Penn Dairies, Inc. v. Milk Control Commission, 344 Pa. 635, 26 A. 2d 441, aff'd 318 U. S. 261 | 14, 15, 17 |
| Public Utilities Commission v. United States, 355 U. S. 534 | 14, 17 |
| Ray v. Parker, 15 Cal. 2d 275 | 4, 6, 7 |
| Silas Mason Co. v. Tax Commission, 302 U. S. 186 | 21 |
| Six Companies v. DiVinney, 2 Fed. Supp. 693 | 21 |
| Standard Oil v. California, 291 U. S. 242 | 24 |
| Standard Oil Co. v. Johnson, 10 Cal. 2d 758 | 21 |
| State v. Mendez, 61 P. 2d 300 | 21 |

PAGE

Surplus Trading Co. v. Cook, 281 U. S. 647 ..... 23, 25

United Milk Producers v. Cecil, 42 Cal. App. 2d 748 ..... 7

United States v. Georgia Public Service Commission (No. 794, Oct. term, 1961, p. 15) ..... 17

United States v. Warne and Mosk, 190 Fed. Supp. 645 ..... 14, 20, 22

United States v. Watkins, 22 F. 2d 437 ..... 21

Valley County v. Thomas, 97 P. 2d 345 ..... 21

Willing, In re, 12 Cal. 2d 591 ..... 6

Wilson v. Cook, 327 U. S. 474 ..... 21

MISCELLANEOUS

Hearings Before the House Armed Services Committee (1949-1950), Print No. 115, p. 4001 ..... 18

House Report No. 109, 80th Cong., 1st Sess., p. 30 ..... 12

Report of the California Attorney General (1958), Jurisdiction Over Federal Enclaves in California, p. 73 ..... 20, 23, 24, 25, 26

Senate Report No. 601, 83rd Cong., 1st Sess., p. 8 ..... 18

STATUTES

California Agricultural Code, Sec. 4200 ..... 2, 4

California Agricultural Code, Sec. 4201 ..... 4, 8

California Agricultural Code, Secs. 4201-4204 ..... 11

California Agricultural Code, Sec. 4204(b) ..... 6, 9

California Agricultural Code, Sec. 4205 ..... 4

California Agricultural Code, Sec. 4226 ..... 5

California Agricultural Code, Sec. 4227 ..... 5

California Agricultural Code, Sec. 4228 ..... 5

PAGE

California Agricultural Code, Sec. 4230 ..... 5
California Agricultural Code, Sec. 4230.5 ..... 5
California Agricultural Code, Sec. 4280 ..... 5
California Agricultural Code, Sec. 4281 ..... 5
California Agricutural Code, Sec. 4292 ..... 8
California Agricultural Code, Sec. 4295 ..... 8
California Agricultural Code, Sec. 4351 ..... 7
California Agricultural Code, Sec. 4351.5 ..... 7
California Agricultural Code, Sec. 4360 ..... 8
California Agricultural Code, Sec. 4361 ..... 16
California Government Code, Sec. 126 ..... 20
California Political Code of 1872, Sec. 34 ..... 20
California Statutes of 1897, Ch. 56, p. 51 ..... 21, 23
Department of Defense Appropriation Act, 1962, Sec. 613 .... 12
National Military Establishment Appropriation Act, 1950, Sec. 623 ..... 13
Pennsylvania Statutes, Title 31, Sec. 700J-103 ..... 16
Pennsylvania Statutes, Title 31, Sec. J-807 ..... 16
40 Revised Statutes, Sec. 355 (as amended, Act of Oct. 9, 1940) ..... 21
54 Statutes at Large, p. 1083 ..... 21
63 Statutes at Large, p. 987 ..... 13
75 Statutes at Large, p. 365 ..... 12
Statutes of 1939, Ch. 710, p. 2231 ..... 20
United States Code, Title 10, Sec. 2301 et seq ..... 13
United States Code, Title 10, Par. 2303(a) ..... 13
United States Code, Title 10, Par. 2304(a)(8) ..... 13

PAGE

United States Code, Title 10, Sec. 2482 ..... 12

United States Constitution, Art. I, Sec. 8, Clause 17 ..... 22

TEXTBOOKS

23 Opinions of California Attorney General, p. 17 ..... 25

23 Opinions of California Attorney General, p. 19 ..... 23

23 Opinions of California Attorney General, p. 21 ..... 24, 25

23 Opinions of California Attorney General, p. 22 ..... 24, 25

23 Opinions of California Attorney General (1954), p. 14 ..... 20, 23, 24, 25, 26

Tinley, Public Regulation of Milk Marketing in California (1938), p. 78 ..... 16

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 19.

CHARLES PAUL, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California,

*Appellants,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

**On Appeal From the United States District Court for the Northern District of California, Southern Division.**

## Brief of Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, General Dairy Industry Committee of Southern California, as Amici Curiae in Support of Position of Appellants.

### Brief Filed With Consent of Parties.

All parties to the case have given their written consents to the filing of this brief. Such consents have been filed with the Court concurrently with the filing of the brief.

## Interest of Amici Curiae.

Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, and General Dairy Industry Committee of Southern California are all nonprofit trade associations, the membership of each of which is composed of persons engaged in the business of processing and distributing fluid milk and other dairy products.[1]

All members of Dairy Institute of California, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, and General Dairy Industry Committee of Southern California, and all members of Milk Industry Foundation doing business in California, are subject to the California Milk Stabilization Act.[2] All such members, as well as mem-

---

[1]Members of Dairy Institute of California process and distribute approximately 70% of all fluid milk and dairy products processed and distributed throughout the State of California. Members of Milk Industry Foundation (1145 - 19th Street, N.W., Washington, D. C.) operate throughout the United States and in some foreign countries. Members of Alameda County Milk Dealers Association, San Francisco Milk Council and Santa Clara County Milk Dealers Association have principal offices in the Northern California area in which the present case originated. Members of Dairymens Service Association have principal offices in Southern California in San Bernardino and Riverside Counties. Members of General Dairy Industry Committee have principal offices in the Southern California area.

[2]California Agricultural Code, Sections 4200 *et seq.*

bers of Milk Industry Foundation with offices outside California, are eligible to, and many of such members do, sell fluid milk and dairy products to agencies of the United States Government. All amici and their members, therefore, have an important economic interest in the determination of the questions presented by this case, and regard the decision of the United States District Court below as having an extremely adverse impact upon amici and their members and upon the right of the State of California, and of states generally, to deal effectively through legislation with the stabilization of the economy of the dairy industry.

## ARGUMENT.

### I.

### The Decision of the District Court, Rendered Contrary to the Decision of This Court in the Penn Dairies Case, Thwarts the Administration of the California Milk Stabilization Act and Causes Irreparable Injury to the Consuming Public and the California Milk Industry in a Situation Where There Is Neither Economic Necessity nor Federal Constitutional Provision or Statute Requiring the United States to Override the Worthwhile Objectives of State Law.

In any consideration of the California Milk Stabilization Act it must be recognized at the outset that the ultimate objective of the Act is protection of the health and welfare of the consuming public, to be achieved by (1) stabilization of an industry characterized by disruptive competition and (2) insurance to the consuming public, through such industry stabilization, of an adequate and constant supply of fluid milk at reasonable prices. These are both the stated objectives of the Act[3] and the legal foundation upon which the constitutionality of the Act depends as a valid exercise of the State's police power.[4] Any substantial exceptions to the complete statutory plan of the Act, such as that permitted by the decision of the District Court in this case, inevitably prevent the Director of Agriculture from effectively carrying out such plan. The damaging result of the District Court's decision is accordingly not confined to the creation of a dairy industry problem,

---

[3]Calif. Ag. Code, Sections 4200, 4201, 4205.

[4]*E.g. Nebbia v. New York*, 291 U. S. 502 (1934); *Jerseymaid Milk Products Co. v. Brock*, 13 Cal. 2d 620 (1939); *Ray v. Parker*, 15 Cal. 2d 275 (1940).

but extends in greater scope to frustration of economically desirable police power objectives of the State of California, with consequent injury to the consuming public.

The California Milk Stabilization is a most important exercise of the State's police power, applied to achieve stability for the past *twenty-five years* in that State's second largest industry. Such industry stability, and resulting insured public supply of fluid milk, are accomplished through establishment by the Director of Agriculture of minimum prices to be paid by distributors to producers for fluid milk and of minimum prices for sales of processed fluid milk by distributors at wholesale and retail. The present case presents the question of the application of the minimum producer and minimum wholesale pricing provisions of the Act to sales of fluid milk to agencies of the Federal Government upon land over which the State of California asserts jurisdiction.

The California Milk Stabilization Act provides that producers shall be paid by distributors a Class 1 return (the highest price return) for fluid milk sold for purposes of human consumption.[5] This is the category of usage of fluid milk at the three military installations involved in the present case.[6] A lesser price is required to be returned to producers for fluid milk which is utilized by distributors for purposes of manufacturing dairy products such as butter, cheese, cottage cheese, etc.[7] All distributors are required to pay a uni-

---

[5]Calif. Ag. Code, Sections 4226, 4280, 4281.

[6]R. 643, 645, 646, 647.

[7]Calif. Ag. Code, Sections 4227, 4228, 4230, 4230.5.

form price to producers for fluid milk of like usage and like grade or quality.[8]

The California courts in construing the Milk Stabilization Act have expressly recognized that the basic purposes of the Act, namely, the achievement of economic stability in a large and complicated industry for the protection of the health and welfare of the consuming public, are defeated unless (1) all distributors pay their producers uniformly for milk of like usage and quality, and (2) all sales of fluid milk are subject to the Act. These courts have found that with "cut-price" exceptions for certain sales, the competitive stress in the dairy industry which caused the California Legislature to adopt the Act in the first instance will inevitably return with its consequent injury to the consuming public and to the dairy industry.[9] These courts have also rejected an attempt by cooperative as-

---

[8]Calif. Ag. Code, Section 4204(b).

[9]"The purpose of said chapter . . . is to eliminate economic disturbances and unfair trade practices in the milk industry which threaten both the quality and adequacy of the supply of fluid milk and cream. . . . Thus provisions which protect the producer by establishing a fair price to him and affording him security for the payment of the price due him for milk and cream by means of a bond, are incident to the broader purpose to protect the public milk supply." (*In re Willing*, 12 Cal. 2d 591 (1939).) "Prescribed minimum prices fail of their purpose if they lie in the shadow of cut prices. . . . A price below a fixed minimum for milk produced in the state endangers those established standards for the milk industry that safeguard the public health and leads successively to a breakdown of the law, price cutting, diminishing returns to the producers, inferior standards of milk production, and generally injurious effects on the public health." (*Pacific Coast Dairy v. Department of Agriculture*, 19 Cal. 2d 818 at 822, and 826 (1942) (rev'd on other grounds, 318 U. S. 285 (1943). See also, *Jerseymaid Milk Products Co. v. Brock*, 13 Cal. 2d 620, at 637-638 (1939); *Kay v. Parker*, 15 Cal. 2d 275 at 281 (1940); R. 344, 345.)

sociations of producers acting as distributors to secure exemption from the provisions of the Act specifying minimum returns by distributors to producers.[10]

The California Milk Stabilization Act requires the concurrent existence of both its minimum producer pricing provisions and its minimum wholesale pricing provisions. The Director of Agriculture has no authority to separate the two types of pricing provisions but instead is required to establish minimum wholesale prices in marketing areas where minimum producer prices are established.[11] Both producer pricing and wholesale pricing regulations stand upon exactly the same constitutional basis in respect to the exercise by the State of its police power authority over the dairy industry.[12]

In an industry as complicated as the milk industry the calculation of producer returns is difficult where different usages are involved and distributors pool the milk of a number of producers for purposes of deter

---

[10] "Petitioners . . . point out that a cooperative, from the very nature of its organization, cannot return the price fixed by the 'Director' for milk, if its net returns are less than such price; that in cooperatives, the producer-member is the owner, and that he receives the profits from its marketing activities, and should therefore bear any loss. It must be assumed that the foregoing effect upon cooperative organizations must have been foreseen by the Legislature, but that they considered that the health and general welfare of the people as a whole were paramount over such matters as the internal management of such associations, and their customary method of operation. *The proof of a legislative intent to make the Milk Control Act all-inclusive is so apparent and strong that considerations of the foregoing nature must give way before it.*" *United Milk Producers v. Cecil*, 42 Cal. App. 2d 748, p. 760 (1941); emphasis supplied.

[11] Calif. Ag. Code, Sections 1351, 1351.5

[12] *Nebbia v. New York*, 291 U. S. 502 (1934); *Jerseymaid Milk Products Co. v. Frock*, 13 Cal. 2d 620 (1939); *Ray v. Parker*, 15 Cal. 2d 275 (1940).

mining payment to each producer in the pool.[13] In the case of cooperative associations of producers acting as distributors the problem of proper enforcement of minimum producer payments is intensified by code provisions permitting adjustments or deductions by any such association to its members "including the blending of proceeds received from the sale of fluid milk by such cooperative in other markets."[14] Competitive pressures to avoid or reduce minimum producer payments, or to engage in destructive trade practices at the wholesale level, are substantially relieved by the establishment of minimum wholesale prices since the latter prices are required to be established by the Director of Agriculture in the first instance so as to secure a return to the distributor of a price "sufficient . . . to cover costs . . . and reasonable return upon necessary capital investment . . . ."[15] The minimum wholesale pricing provisions of the act accordingly greatly aid the Director of Agriculture in enforcing minimum producer pricing returns, and in carrying out the purpose of the Act to eliminate "destructive and demoralizing trade practices" (Cal. Ag. Code Sec. 4201). It is for these reasons that the California Milk Stabilization Act represents a comprehensive regulation of the entire fluid milk industry with required enforcement on the part of the Director of Agriculture of both minimum producer pricing provisions and minimum wholesale pricing provisions, and with no exceptions to the Act.[16]

---

[13]Calif. Ag. Code, Sections 4292, 4295.

[14]Calif. Ag. Code, Section 4295.

[15]Calif. Ag. Code, Section 4360.

[16]*Pacific Coast Dairy v. Department of Agriculture*, 19 Cal. 2d 818 at 822, 826 (1942); (rev'd on other grounds, 318 U. S. 285 (1943)).

Prior to the institution of the present action appellants had filed actions against cooperative associations of producers acting as distributors charging that the producer members of such associations had not been paid the minimum return prices required to be paid in respect to federal sales.[37] A California trial court in the only action which has so far been permitted to proceed to trial[38] on the issue of underpayment of producers by cooperative associations of distributors selling fluid milk to the United States, expressly found that such sales were being made by the cooperative at prices insufficient to enable the cooperative to return to its producers the State established minimum producer price.

Obviously if a cooperative corporation or any other distributor makes sales of fluid milk to federal agencies, but returns from such sales to producers less than the minimum producer prices established by the Director of Agriculture for the particular marketing area in question, the cost of fluid milk to such distributor is not uniform (as required by Calif. Ag. Code Sec. 4204(b), cited above) with that of other distributors who do comply with the Milk Stabilization Act and pay their producers the State established minimum producer return from all sales, including federal sales. By simple

---

[37] R. 150, 516-523, 550, 655-656, 744, 758, 760-791; *cf. Warne v. Milk Producers Association* (Stanislaus County Superior Court No. 69305).

[38] *Paul v. Allied Dairymen, Inc.* (5th Civ. No. 147 in the California District Court of Appeal, Fifth Appellate District, on appeal from a judgment of the Tulare County Superior Court in trial court action No. 56335). This case was enabled to proceed to trial after a partial stay of injunction as to enforcement of minimum producer prices was granted in the present case by the United States Supreme Court on July 3, 1961.

process of economic competition, such underselling distributor's competitors in the distribution field are then left with the following choices:

(1) To go out of the federal business altogether and thus deprive the producers who supply such competing distributors of a substantial market for their milk; or

(2) To meet the competition of the underselling distributor, with substantial loss to such competing distributors and the producers who supply them.

Either result is not only inequitable but completely contrary to the entire purpose of the California Milk Stabilization Act which is to secure *stabilization* in the dairy industry.

The decision of the District Court in this case thwarts all the purposes of the California Milk Stabilization Act with substantial resulting damage to the industry and the consuming public. Such decision not only permits distributors who choose to disregard the State's minimum producer pricing regulations to incur a lower raw product cost than that of their competitors; and prevents the State's enforcement of any provision of the Milk Stabilization Act as to federal sales, but in addition carves a tremendous exception into the Act representing 6% of all fluid milk sales in the State of California.[19] The resulting loss to the California dairy farmer from the drop in price on federal sales permitted and encouraged by the District Court decision has been estimated at not less than $6,000,000 annually.[20] Likewise, the $106,000,000 investment in

---

[19]R. 348.

[20]R. 684.

plant and physical facilities of California milk distributors is impaired by the ruling of the District Court. Milk distributors whose maintenance of such plant and physical facilities requires a certain volume of milk, including that from federal sales, but who cannot obtain from federal sales the established minimum wholesale price nor in turn pay over to their producers the established minimum producer price, must either absorb losses or get out of the federal business altogether. Such losses inevitably impair distributors' efficiency with consequent injury to consumers, particularly in an industry whose inherent lack of stability caused the California Legislature to protect consumers by enactment of the California Milk Stabilization Act.[21] These losses occasion (contrary again to the stated purposes of the California Milk Stabilization Act) unusual disruption of market conditions because of the large volume of federal purchases and will tend to drive out of business smaller distributors whose limited resources will not permit them to absorb losses from federal sales and stay in business. Finally, and perhaps most important, California consumers must participate with the dairy industry in subsidizing the losses from federal sales for the benefit of purchasers from federal commissaries.[22]

All of these undesirable consequences have been accomplished by the District Court in this case in a summary proceeding where no evidence was taken except in affidavit form, and where such differences existed

---

[21] California Agricultural Code, Sections 4201-4204. These factors of economic instability are set forth in detail in *Nebbia v. New York*, 291 U. S. 502 at 517-518 (1934). See also footnote 9, *supra*.

[22] R. 344.

between the parties and the Court at the end of the proceeding that the District Court could not settle findings but instead was required to adopt its opinion as its findings of fact.[23]

73% of the fluid milk sales to Castle Air Force Base, 64.5% of such sales to Travis Air Force Base, and 78% of such sales to Oakland Army Terminal[24] are for resale through government retail stores known as commissaries which are required to be operated without cost to the United States.[25] These stores may be operated by private persons[26] and are in competition with nearby privately owned retail stores which must observe the minimum wholesale pricing requirements of the California Milk Stabilization Act.[27] Less than 30% of the total volume of fluid milk purchased for the three described areas is purchased through money appropriated for troop ration.[28]

The decision of the District Court below was that application of the California Milk Stabilization Act to federal purchases at Castle and Travis Air Force Bases, and at Oakland Army Terminal, whether for resale through commissaries, or for troop ration, is prevented because of conflict between such Act and a federal procurement function as expressed in the Armed

---

[23]R. 585-600, 648.

[24]R. 643, 645, 646.

[25]R. 634. See also Section 613, Department of Defense Appropriation Act, 1962, 75 Stat. 365, and prior annual Department of Defense Appropriation Acts, and House Rep. No. 109, 80th Cong. 1st Sess., p. 30.

[26]10 U. S. C., Section 2482.

[27]R. 383, 552, 639, 819.

[28]R. 643, 645, 646.

Services Procurement Act of 1947.[29] The decision is necessarily in error as to fluid milk purchased for use or resale through post exchanges, officers' clubs, non-commissioned officers' messes and post restaurants, since the latter are required to be operated through non-appropriated funds[30] and the Armed Services Procurement Act does not apply to any military purchases except those "for which payment is to be made from *appropriated* funds."[31]

As to the approximately 70% of fluid milk purchases for resale through commissaries at the three military installations, such commissaries, while financed with appropriated funds,[32] are required to be operated without cost to the government.[33] Further, the Armed Services Procurement Act exempts commissary purchases from formal advertising and bid procedures.[34] As to the remaining less than 30% of total fluid milk purchases for troop ration, this Court almost twenty years ago expressly held that there was no conflict between the Armed Services Procurement Act and state statutes regulating prices for the purchase and sale of fluid milk.[35]

The requirements of the present Armed Services Procurement Act in respect to competitive bidding are not in any material way different from similar provisions in force at the time of the *Penn Dairies* case. In

---

[29]10 U. S. C., Section 2301, *et seq.*

[30]R. 516, 538-540. Section 623, National Military Establishment Appropriation Act, 1950, 63 Stat. 987, at 1022.

[31]10 U. S. C., Par. 2303(a).

[32]R. 634, 643, 645, 646.

[33]See fn. 25, *supra.*

[34]10 U. S. C., Par. 2304(a)(8).

[35]*Penn Dairies v. Commission*, 318 U. S. 261 (1943).

fact the enactment of the Armed Services Procurement Act in its present form, after the *Penn Dairies* decision, without any express statutory provision declaring state price fixing regulations inapplicable to fluid milk purchased by federal agencies, furnishes a persuasive reason for concluding today, as at the time of the *Penn Dairies* case, that such laws as the California Milk Stabilization Act are not considered by the United States Congress as an interference with a federal function.

For all the additional reasons hereafter stated the District Court erred in concluding that the California Milk Stabilization Act "places a prohibition on the Federal Government within the meaning of the *Public Utilities* case. . ."[36]

(1) As in the *Penn Dairies* case, the State of California does not assert that its Milk Stabilization Act places federal procurement officers under criminal jeopardy, and the California Supreme Court has ruled that the act regulates "*not* the army, but the distributors who are independent contractors with the federal government."[37]

(2) The Pennsylvania Milk Control Law has also been held inapplicable to federal procurement officers.[38]

---

[36] *United States v. Warne and Mosk*, 190 Fed. Supp. 645, at 657, referring to *Public Utilities Commission v. United States*, 355 U. S. 534 (1958).

[37] *Pacific Coast Dairy v. Dept. of Agriculture*, 19 Cal. 2d 818, 830 (rev'd on other grounds, 318 U. S. 285 (1943). This is also the construction of the California Act by the United States Comptroller General (Opinion B-35906, Sept. 1, 1943).)

[38] *Penn Dairies, Inc. v. Milk Control Commission*, 344 Pa. 635, 26 A. 2d 441, 445, aff'd 318 U. S. 261 (1943). The question has been similarly decided in Massachusetts (*Milk Control Board v. Gorselini Dairies, Inc.*, 301 Mass. 174, 16 N. E. 2d 641, 1938).

(3) The applicable provisions of the California Milk Stabilization Act do not differ, in regard to application to federal purchasing agents, from the provisions of the Pennsylvania Milk Control Law at the time the latter came before the United States Supreme Court for decision in the *Penn Dairies* case.[39]

(4) Where minimum producer prices are established under federal marketing orders such prices are enforced in sales of fluid milk to the Federal Government notwithstanding the competitive bid requirements of the Armed Services Procurement Act and notwithstanding the possibility of a price increase to federal agencies.[40] There can be no distinction in legal theory or in practical effect between the minimum producer pricing provisions of federal marketing orders applicable to fluid milk, and the California minimum producer and minimum wholesale pricing provisions applicable to fluid milk in an area where there are no federal marketing orders.

---

[39]Calif. Ag. Code, Sec. 4301 ("No distributor shall sell . . . and no retail store, restaurant, confectionary or other place for consumption on or off the premises, shall purchase . . . at less than the prices established . . ."); Penn. Act of April 28, 1937 (Pa. Stats., Title 31, Sec. 700J-103 (defining "milk dealer" as "any person who purchases or receives or handles . . . milk")) and J-807 (providing for criminal penalties against "milk dealers")).

[40]*Knudsen Brothers Dairy, Inc. v. Benson* (U.S.D.C. Conn., Civil Action 8145, 1969) (case on appeal on other grounds under title of *Knudsen Brothers Dairy, Inc. v. Freeman*, Court of Appeals, Second Circuit, No. 26098) ("The plaintiff advances the argument that the payment order conflicts with the policy of competitive bidding utilized by the armed forces in procurement programs and should therefore be invalidated. It is true that the assessment may cause a partially regulated handler of outside milk to submit a higher bid figure as a result of the assessment. * * * Any increase in price which may indirectly result to the government in the purchase of milk supplies can therefore be justified since the requirement for payments to the fund insures a supply of quality milk in sufficient quantities which otherwise might be endangered due to the economic forces peculiar to this industry.")

(5) The Solicitor General in the present proceeding has stated that "the federal government, while not conceding that California can regulate producer prices . . . has concluded as a matter of procurement policy not to assert immunity from these minimum prices but to accede to full compliance with these requirements."[41] This statement inevitably concedes a lack of conflict between any federal function expressed in the Armed Services Procurement Act and the enforcement under the California Milk Stabilization Act of minimum producer pricing regulations, as otherwise the Solicitor General would be without authority to waive on behalf of the government the requirements of the Armed Services Procurement Act. This concession must also extend to minimum wholesale pricing regulations since from an economic standpoint compliance with either California minimum producer prices or minimum wholesale prices will affect the ultimate price of fluid milk to federal agencies.[42]

---

[41]Memorandum for the United States, *Paul v. United States*, Oct. term, 1962, No. 19, p. 5.

[42]The United States and the District Court below drew no distinction between the economic effect on federal milk purchases of California's minimum producer pricing regulations and of minimum wholesale pricing regulations. [R. 13-14, 15-16, 154-155, 508-509, 526-528, 581-582, 666-669.] 80% of the minimum wholesale price established by the California Director of Agriculture represents costs fixed by law such as minimum producer raw product price, taxes and wages established by collective bargaining agreement (Tinley, "Public Regulation of Milk Marketing in California," 1938, p. 78). The balance of the wholesale price established by the State accordingly has only a minimal impact upon federal purchases estimated, for example, at 1.87¢ per quart at Oakland Army Terminal (See Brief for Appellants, *Paul v. United States*, Oct. Term, 1962, No. 19, at p. 79), a figure closely approximating the 1.6¢ per quart impact of the State-established wholesale price sustained by this Court in the *Penn Dairies* case (318 U. S. 261, at p. 280).

The Solicitor General's suggestion of course is unsatisfactory in any event since it is a concession which as a matter of federal procurement policy could be withdrawn or modified as quickly as it was made in the first instance. What is necessary in the present proceeding is a determination by the Court of the *right* of the State of California and not a determination in respect to day to day changes in federal procurement policy. The suggestion of the Solicitor General is tantamount to an admission that there is no constitutional objection to the enforcement by the State of California of either its minimum producer or its minimum wholesale pricing regulations against producers and distributors selling fluid milk to the Federal Government, since as noted above both sets of regulations have an economic effect upon the Federal Government and both stand upon the same constitutional basis for their validity as an exercise of state police power. If, therefore, federal procurement officials may lawfully concede to the State's enforcement of minimum producer pricing regulations, they must inevitably concede to the State's enforcement of minimum wholesale pricing regulations.

(6) Federal policy expressly supports, rather than opposes, stabilization of the economy of dairy farmers.[43]

(7) This Court has itself distinguished the *Public Utilities* case from the *Penn Dairies* case in respect to lack of application of the Pennsylvania Milk Control Law to federal officers.[44] The Solicitor General has recognized the validity of the distinction.[45]

---

[43] U. S. C., Par. 1446b.

[44] *Public Utilities Commission v. United States*, 355 U. S. 534, at pp. 543-544 (1958).

[45] Jurisdictional Statement, *United States v. Georgia Public Service Commission*, No. 794, Oct. Term, 1961, p. 15.

(8) There is no economic necessity from the federal standpoint to compel a construction of the Armed Services Procurement Act as overriding state milk regulations statutes. The approximately 70% of fluid milk purchased by commissaries is not intended by any federal policy to place such commissaries at a competitive advantage over nearby competing privately owned retail stores, and as previously noted, such commissaries operate wtihout cost to the Government.[46] Purchasers from commissaries will not be substantially affected by enforcement of State minimum producer and minimum wholesale pricing regulations as such buyers will continue to get the advantage of a price without a store mark-up and the commissaries will continue to get the advantage of special volume discount provisions specified in State minimum pricing orders.[47] As to the remaining 30% of fluid milk purchased for troop ration Congress has specifically recognized that service personnel are not underpaid.[48]

In summary, therefore, the decision of the District Court has thwarted the purposes of the California Milk Stabilization Act, has caused irreparable injury to the California consuming public and to the dairy industry, and has been rendered contrary to the decision of this Court in the *Penn Dairies* case in a situa-

---

[46]Senate Report 601, 83rd Cong., 1st Sess. p. 8; footnote 25, *supra.*

[47]R. 345, 346.

[48]Print No. 115, Hearings Before the House Armed Services Committee, 1949-1950, p. 4001.

tion where neither economic necessity nor constitutional provision nor statutory policy compel such a result or indicate the serving of any federal purpose by such a result.

This situation is particularly aggravating to federal-state relations because of the obvious efforts of federal procurement personnel in this case to take affirmative action to avoid the application of state law. Thus, at Castle Air Force Base, immediately upon appellants' filing suit to enforce the California Milk Stabilization Act as to federal purchases then being made over property as to which there was no question of state jurisdiction, the government directed the milk distributor to cease making delivery of milk to buildings located on such property and to deliver the milk to a civilian housing tract located just outside the base proper over which parcel the government asserted jurisdiction.[49] There was no overruling federal purpose which required such conduct. The economic effect of application of the California Milk Stabilization Act to producers and distributors selling fluid milk to the three military bases involved is minimal. Despite these considerations the conduct of the federal procurement agencies has caused all the detrimental consequences summarized above and has tended to create local animosity for no purpose.

---

[49]R. 350-351, 363, 642-643.

## II.

## The State of California Retains Jurisdiction Over Castle and Travis Air Force Bases, and Oakland Army Terminal.

Appellants in their brief have treated in detail the subject of state jurisdiction over the three military areas in question. Amici fully support appellants' position and will therefore not restate or present argument in full on the issue of jurisdiction, particularly in reference to Oakland Army Terminal which involves a claim by the United States of acquisition of jurisdiction under California Government Code Section 126. However, amici believe it important to argue briefly the issue of jurisdiction of Castle and Travis Air Force Bases since these two land areas are typical, in respect to the method of federal acquisition, of the great bulk of federal military areas within the State of California.

The position of the District Court, relying exclusively on an opinion of the California Attorney General,[50] was that exclusive jurisdiction over Castle and Travis Air Force Bases was acquired by the United States under a California statute of 1872[51] merely by the purchase by the United States, with the statutory consent of the State of California, of such lands for military purposes.[52] A reading of the 1872 statute

---

[50]23 Ops. Cal. Atty. Gen. 14 (1954), summarized in a 1958 Report of the California Attorney General, "Jurisdiction Over Federal Enclaves in California," p. 73.

[51]1872 Political Code, Section 34, as amended, Stats. 1939, Ch. 710, p. 2231.

[52]*United States v. Warne and Mosk*, 190 Fed. Supp. 645, at 651-653 (D. C. N. D. Cal. 1960).

will disclose that it is a consent restricted to the purchase of *land* and that nowhere in the statute are there any provisions for cession or transfer of *jurisdiction* to the United States. Statutes in derogation of state sovereignty are strictly construed; there is no presumption of surrender of state jurisdiction; and the surrender of such jurisdiction will not be read into a statute unless expressly stated in the statute.[53] Rejecting contrary expressions in earlier decisions, this Court has held that a state may reserve jurisdiction in whole or in part over land purchased by the United States with state consent for military purposes.[54] If a state statute conditions transfer of jurisdiction to the Federal Government upon performance by the Federal Government of certain acts, such acts must be fully and completely performed or else the surrender of jurisdiction is not effective.[55]

In 1897 the State of California adopted a statute, in effect at the time the United States acquired Castle and Travis Air Force Bases,[56] providing that the United States, in order to obtain exclusive jurisdiction over *all* lands "now held, occupied or reserved by the Gov-

---

[53]*Wilson v. Cook* 327 U. S. 474, at 486 (1946); *Silas Mason Co. v. Tax Commission*, 302 U. S. 186 (1937); *James v. Dravo Contracting Co.*, 302 U. S. 134 (1937); *Adams v. United States*, 319 U. S. 312 (1942); *Larson v. South Dakota*, 278 U. S. 429 (1929); *Standard Oil Co. v. Johnson*, 10 Cal. 2d 758, at 766-767 (1938).

[54]*James v. Dravo Contracting Co.* 302 U. S. 134 (1937).

[55]40 Rev. Stats., Sec. 355, as amended, Act of October 9, 1940, 54 Stat. 1083; *United States v. Watkins*, 22 F. 2d 437 (D. C. N. D. Cal. 1927); *Gill v. State*, 216 S. W. 637 (Tenn. 1919); *State v. Mendez*, 61 P. 2d 300 (Nev. 1936); *Valley County v. Thomas*, 97 P. 2d 345 (Mont. 1939); *Six Companies v. Dil'inney*, 2 Fed. Supp. 693 (D. Nev. 1933).

[56]California Stats. 1897, Ch. 56, p. 51.

ernment of the United States for military purposes or defense, or which may be hereafter ceded or conveyed to said United States for such purposes," observe certain conditions specified in the statute, namely, the filing in the appropriate County Recorder's office of a description by metes and bounds of the land acquired and a map or plat of such lands. It is conceded that as to Castle and Travis Air Force Bases the United States did not comply with the conditions specified in the 1897 statute.[57]

The case is accordingly clear that as to Castle and Travis Air Force Bases the United States has not acquired exclusive jurisdiction. Although the Federal Constitution in Article I, Section 8, Clause 17 may have given the United States the right to exercise exclusive legislation over land purchased with state consent, this consent was nevertheless validly conditioned by California on the performance by the United States of certain conditions which have never been met. The District Court held that the 1897 statute is a "cession" statute, inapplicable to land *purchases* by the United States, with State consent, for military purposes.[58] Such decision is in patent disregard of the exceedingly sweeping and plain words of the 1897 statute which applies to "*all* lands within this State now held, occupied or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded *OR CONVEYED* to said United

---

[57] R. 643, 644, 646; see Memorandum for the United States, *Paul v. United States*, Oct. Term, 1962, No. 19, p. 5.

[58] *United States v. Warne and Mosk*, 190 Fed. Supp. 645, at 651, 653 (D. C. N. D. Cal. 1960).

States for such purposes . . . ."[5] Less ambiguous words could not have been used by the California Legislature to make this 1897 statute applicable to *all* California lands acquired by the United States for military purposes, whether such lands were acquired by state cession, or by *conveyance* upon purchase or condemnation or gift or any other method of acquisition. The *sole reliance* of the District Court in avoiding the provisions of the 1897 statute was on a 1954 opinion of the California Attorney General[6] in which opinion it is concluded, relying exclusively on the decision of this Court in *Surplus Trading Co. v. Cook*,[7] that the 1872 and 1897 California statutes are inconsistent with one another and that the only way to reconcile the two statutes is to regard the 1897 statute as treating of military purposes other than the "constitutional" military purposes spoken of in the 1872 statute.[8] This opinion of the Attorney General cannot be a controlling authority in this case, and is in error, for the following reasons:

(1) Such opinion asserts that the 1872 California statute applies to federal land acquisitions for "*constitutional* military purposes" but that the 1897 statute applies only to military acquisitions for "*unconstitutional purposes*." This assertion is without substance or statutory support as the 1897 statute applies to "*All* lands within this State now held, occupied or reserved by the Government of the United States for

---

[5] California Statutes 1897, Ch. 58, p. 51.

[6] 23 Ops. Cal. Atty. Gen. 11 (1954).

[7] 281 U. S. 647 (1930).

[8] 23 Ops. Cal. Atty. Gen. 14, at 19.

*military purposes or defense*, or which may hereafter be *ceded or conveyed* to the United States for such purposes."[63]

(2) The 1872 and 1897 statutes are not inconsistent as stated in the opinion. Instead, the 1897 statute in respect to lands acquired for military purposes *qualifies* the 1872 statute by validly imposing conditions for the acquisition by the United States of jurisdiction over lands purchased by the United States with State consent, for military purposes. These conditions have never been met as to Castle and Travis Air Force Bases (fn. 57, *supra.*)

(3) The opinion concludes that jurisdiction was acquired by the United States, *by reason of compliance with the requirements of the 1897 statute*, over 15,809

---

[63]The Presidio in California is perhaps the oldest military area in the state and is as fully qualified to meet the "'constitutional military purpose" test as any military area in the state. As to the Presidio it has been held by this Court (*Standard Oil v. California*, 291 U. S. 242 (1934)), that exclusive jurisdiction of the Presidio was acquired by the United States *under the 1897 statute*. If the 1897 statute did not pertain to "constitutional military purposes," it is impossible to conceive how this Court could have concluded that it was under *this statute* the United States acquired exclusive jurisdiction over the Presidio. Further, the completely inconsistent result of the opinion is laid bare by the fact that it concludes *as to the same military reservation*, Fort Ord, that the United States acquired exclusive jurisdiction under the 1897 statute as to a portion of the military area but was not obligated to comply with this statute as to the remainder of the military base because the statute did not have to do with "constitutional military purposes" (23 Ops. Cal. Atty. Gen. 14, at 21-22). Obviously if the statute applied to one part of Fort Ord it must inevitably apply to all parts of the same fort.

of the 29,010 acres of Fort Ord notwithstanding the fact that such lands were purchased by the United States, with State consent, for constitutional military purposes.[64] The opinion then becomes inherently contradictory in concluding that the 1897 statute does not apply to the remainder of Fort Ord. No doubt this was one reason the opinion (23 Ops. Cal. Atty. Gen. 14, at 21) stated:

> "We reserve opinion and comment as to the nature and extent of jurisdiction over this area and over other military enclaves in this state until specific factual situations giving rise to jurisdictional problems have been submitted to us for solution."

(4) The statute involved in *Surplus Trading Co. v. Cook*, unlike the 1872 California statute, contained an express cession of jurisdiction (281 U. S. 647, at 650-657).

(5) The dicta in *Fort Leavenworth R.R. Co. v. Lowe*, 114 U. S. 534, 537 (1885), that a state may not validly condition acquisition by the United States of jurisdiction over lands purchased with the consent of the state for military purposes was expressly overruled by this Court in its decision in *James v. Dravo Contracting Co.* (302 U. S. 134, at pp. 164-160).

(6) The 1954 opinion obviously has not been adopted by the administrative agency concerned, the Department of Agriculture, nor by the present Attorney General.[65]

---

[64] 23 Ops. Cal. Atty. Gen. 14, at 17, 21-22.

[65] R. 619, 620-621.

(7) If administrative opinions are to be given any weight in this case rather than the provisions of applicable statutes, the District Court opinion should be reversed if for no other reason than that counsel for administrative agencies of the United States has concluded that the United States does not acquire jurisdiction over military areas in California where the 1897 statute conditions have not been met.[66]

It is submitted, therefore, that the case for California jurisdiction over Castle and Travis Air Force Bases is clear and that such case may not be defeated by the erroneous administrative opinion contained in 23 Ops. Cal. Atty. Gen. 14.

**Conclusion.**

The Court is hereby requested again to state its position, as expressed in *Penn Dairies, Inc. v. Milk Control Commission*, 318 U. S. 261, that the State of California may constitutionally enforce both the minimum producer and minimum wholesale pricing provisions of its Milk Stabilization Act against distributors and producers selling fluid milk to the United States, and to declare that California exercises jurisdiction over the

---

[66] *E.g.*, Jurisdiction Summary of Camp Cooke, California, dated November 4, 1957, issued by the Chief Engineer, Real Estate Division, Washington, D. C.; Jurisdiction Summary of Sharpe General Depot, San Joaquin, California, dated October 2, 1942, issued by the Office of Chief of Engineers, Washington, D. C., set forth in the Brief for Appellants, *Paul v. United States*, Oct. Term, 1962, No. 19, at pp. 112-114.

military installations here involved. Upon such declarations the judgments below should be reversed.

Respectfully submitted,

EMIL STEUK, JR.,

THOMAS G. BAGGOT,

*Attorneys for Amici Curiae Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, General Dairy Industry Committee of Southern California.*

JESSE E. BASKETTE,

*Of Counsel for Milk Industry Foundation.*